



Michigan Supreme Court

State Court Administrative Office
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Daniel J. Wright
Director, Friend of the Court Bureau

February 23, 2006

TO: Friends of the Court
cc: Chief Circuit Judges
Circuit Court Administrators
Family Division Administrators

FROM: Daniel J. Wright

RE: SCAO Administrative Memorandum 2006-03
Review and Modification of Child Support Orders

State and federal laws require the friend of the court (FOC) to review child support orders periodically to ensure that the ordered amount reflects the parties' evolving financial circumstances and their children's needs. Michigan's law was modified in 2005 to change FOC child support review and modification procedures.¹ MCL 552.517-552.517b.

A. **Mandatory Triennial Reviews**

Michigan law requires the FOC to review a child support order once every 36 months in the following circumstances:

1. ***If a Child is Supported by Public Assistance***
If the child is being supported in whole or in part by public assistance, the FOC must review the support order every 36 months unless the Department of Human Services (DHS) has given notice that good cause exists not to review the order and neither party has requested a review.
2. ***If a Child is Supported by Medical Assistance***
If the child is receiving Medicaid, the FOC must review the support order every 36 months unless the order already requires health care coverage for the child and neither party has requested a review or DHS has given notice that good cause exists not to review the order and neither party has requested a review.

¹ Michigan IV-D Action Transmittal [2005-037](#) describes review and modification functionality in MiCSES.

3. ***At the Request of a Party or Another State***

Either party or another state may request a support review every 36 months.² A party seeking a more frequent review must either file a motion directly with the court, or provide evidence to the FOC that a substantial change has occurred that merits an additional review (see section B. *Additional FOC Reviews*).

B. Additional FOC Reviews

Michigan law requires the FOC to review a support order more frequently than every 36 months if there are reasonable grounds to believe the order should be reviewed, or if a party demonstrates a “substantial change in circumstances.”³

1. ***Reasonable Grounds to Modify Order***

The FOC must review an order on its own initiative if there are “reasonable grounds” to believe that the amount of child support ordered should be modified. MCL 552.517(1)(b) defines “reasonable grounds” as any of the following:

a. *Changes in custody not ordered by the court.*

SCAO recommends determining if the change in custody not ordered by the court is expected to be permanent or long-term. The FOC should also determine if other provisions in the order should be reviewed.⁴

A review for this purpose is separate from the requirements in MCL 552.605d, which requires the FOC to abate child support when a child moves into the payer’s home,⁵ and allows the FOC to redirect support to a person who has become “legally responsible” for the child.

b. *Increased or decreased needs of the child.*

The law does not define “increased or decreased needs of the child.” Therefore, the circuit court may want to establish a policy for the FOC office to follow when considering a review for this purpose.

c. *Probable access to dependent health care coverage.*

If the FOC believes that health care coverage is available to a party and the order does not include a provision for health care coverage, the FOC must review the order.

d. *Receipt of public assistance.*

Public assistance is defined as cash assistance provided under the Social Welfare Act, which includes family independence program benefits, state

² Federal law requires parties with IV-D cases to receive notice of their right to a support review every three years. 42 USC 666(a)(10). Michigan IV-D Action Transmittal [2005-37](#) describes the review notice functionality of the Michigan Child Support Enforcement System (MiCSES).

³ If the FOC denies a review request, the party can file a motion directly with the court.

⁴ For example, the parenting time provisions in the order may no longer be appropriate.

⁵ [SCAO Administrative Memorandum 2005-04](#) explains the administrative redirect/abate procedures in MCL 552.605d.

family assistance, state disability assistance, child development and care assistance, or food stamps.⁶

e. Receipt of unemployment or worker's compensation.

A case in which a party has cyclical, or anticipated, unemployment periods due to the nature of the job or industry may not require a review during each layoff. If the support order already accounted for the cyclical nature of the job, including a provision in the order could guide the FOC office in determining when a review in these circumstances is necessary.

f. Incarceration or release from incarceration for a term of more than one year.

The FOC must initiate a support review within 14 days after learning that a payer has been incarcerated after being criminally convicted and sentenced to serve more than one year, or released from incarceration.⁷ The FOC may receive the information from various sources, such as a party or relative, or through automated data matching. Michigan IV-D Action Transmittal [2005-038](#) provides guidance on entering and viewing incarceration status on the Michigan Child Support Enforcement System (MiCSES).⁸

If a person is incarcerated for non-payment of support, the FOC should review the order, and allow the court to decide whether granting relief from the support order is equitable.

SCAO has developed the following forms for incarcerated payers to use to request a support review:

[Prisoner Motion to Modify Support](#) (FOC109)

[Prisoner Information Addendum](#) (FOC110)

2. Substantial Change in Circumstances

State and federal laws allow a party to request a support review more frequently than every 36 months if the party provides proof of a “substantial change in circumstances.”⁹ This term is not defined in state or federal law, but may be the same or similar type of changed circumstances that would warrant a “reasonable grounds” review. In addition to the conditions defined in the reasonable grounds section of this administrative memorandum, SCAO recommends conducting a review when a party provides proof of any of the following:

- a. A health issue affecting a party's ability to earn income (a permanent or long term disability or injury, a lengthy hospital stay, etc).

⁶ A Medicaid-only case does not require a review under this section.

⁷ Individuals sentenced to prison, not jail, will fall within this group.

⁸ FOC offices may verify the status of a prisoner through the Offender Tracking Information System (OTIS): <http://www.state.mi.us/mdoc/asp/otis2.html>.

⁹ Michigan law states that the review must occur when there is evidence of a substantial change in circumstances “as set forth in the child support formula guidelines.” However, the guidelines do not define what constitutes a substantial change in circumstances. MCL 552.517b(9).

- b. Significantly increased or decreased wages.¹⁰
- c. Call to active military duty (See *4. Party Called to Active Military Duty*).
- d. Significant changes in the medical expenses of a party.
- e. Changes in the physical, mental, or educational needs of a child.
- f. A significant change in financial circumstances due to a modification of the payer's other support obligations.

3. *Order Lacks Provision for Health Care Coverage*

If a support order lacks provisions for health care coverage, the statute requires the FOC to file a motion to modify the order to require that one or both parents obtain or maintain health care coverage for the children, in either of the following circumstances:

- a. Either parent has health care coverage available, as a benefit of employment, for the benefit of the child at a reasonable cost.
- b. Either parent is self-employed, maintains health care coverage for himself or herself, and can obtain health care coverage for the child at a reasonable cost.

SCAO Administrative Memorandum [2005-03](#) outlines policies and procedures to assist FOC offices in determining and enforcing medical support provisions.

4. *Party Called to Active Military Duty*

If the office receives information that a party has been called to active military duty, the FOC may initiate a review to determine if support should be modified during the party's term of duty. The FOC should request wage information from both the civilian employer and the military, as some employers continue to compensate their employee during his or her term of service.

The federal Servicemembers Civil Relief Act (SCRA), signed into law December 19, 2003, placed new requirements on courts concerning servicemembers. For information on the SCRA and its requirements, please see the SCAO [Servicemembers Civil Relief Act Memorandum](#).

¹⁰ Courts may want to establish limits on non-mandatory review requests from parties, such as a minimum change in income, to avoid receiving requests each time a party gets new employment with relatively minor income changes.

C. Summary of FOC Review Procedures

1. *Determine Whether to Conduct a Review*

The FOC has 14 days from the time it receives a review request to determine whether the order is due for review. If the case is not eligible for a review (if it has been less than 36 months since the last review and there is no evidence of a substantial change in circumstances), the office must send a notice of the denial to the parties, which includes the reason for the denial.¹¹ If the FOC determines the case is due for review, the office has 180 days to complete the review and obtain a modification. MCL 552.517(2).

2. *Notify Parties of Support Review*

The review process starts with the FOC sending notice to the parties requesting financial information. For support modification purposes, the [2004 Michigan Child Support Formula](#) (MCSF) states that net income should be determined from actual tax returns whenever possible. This will more accurately determine actual taxes paid and identify other types of income. Other forms of income verification include paycheck stubs or W-2 statements. The FOC may also request income information directly from the employer by sending [SCAO form FOC 22](#) (Employer's Disclosure of Income and Health Insurance Information) to the party's last known employer.

The child support review notice to the parties must state the date the information is due,¹² and advise the parties of how the review will be conducted.¹³ The FOC can make a recommendation *after 21 days but no later than 120 days* after the due date for the information. MCL 552.517b(3).

If a party fails or refuses to furnish the information, the FOC may do any of the following, based on the circumstances of the case:

a. *Send a second request for information.*

Although not required by law, the FOC may send a second request for information to the parties and extend the due date for the return of the information.

b. *Impute income.*

The FOC may impute income¹⁴ to a party who fails or refuses to provide information sufficient to allow the FOC to review support, or when a party shows a voluntary reduction of income or an unexercised ability to earn.

¹¹ A party whose review request is denied by the FOC can file a motion for modification directly with the court.

¹² The law does not specify a time limit for the parties to provide the information to the FOC, but states that the notice to the parties must include the date the information is due to the FOC. SCAO recommends the information be due within 21 days.

¹³ MiCSES will generate the Notice of Support Review, Employment Disclosure Form, and Case Questionnaire for cases that are eligible for a 36-month review.

¹⁴ Imputation of income is treating a party as having income or resources that the individual does not actually have. 2004 MCSF 2.10.

The MCSF provides guidance for imputing income, as well as conditions in which imputation would be inappropriate. 2004 MCSF 2.10. When considering whether to impute income, the FOC should consider the payer's employment experience, education level, physical and mental disabilities, the availability of employment, the prevailing wage in the region, special skills or training, and evidence that the person is able to earn the imputed income. There are many resources available to impute income. The federal minimum wage rate, prevailing wages in the community, and median income information are usually readily available from the [Census Bureau](#). In addition, there are websites that calculate average wages for professions in a given community.¹⁵

If the FOC recommends a support amount based on imputed income, the recommendation must also state the amount that would have been recommended based on the actual income if the actual income is known.¹⁶ The law requires the recommendation to recite all factual assumptions on which the imputed income is based. This recitation should be sufficient to allow the court to understand how income was imputed, and the parties to present evidence to counter (or support) the imputation, but need not be exhaustive. The recitation could be a numbered or bulleted list depending on the court's needs in using the recommendation.

c. Send Administrative Subpoena to Employer.

The FOC may issue an administrative subpoena requiring any public or private entity that employs or has employed a parent to provide current employment information that pertains to the parent and that is necessary for the review.¹⁷ MCL 552.518.

3. Conduct or Terminate the Review

Once the office has sufficient information to conduct the review, the FOC must calculate support based on the MCSF.¹⁸ MCL 552.505(1)(h).

If the FOC initiates the review and does not receive financial information from either party, the FOC may terminate the review based on the lack of information. Reviews should not be terminated for lack of financial information in public assistance cases.

¹⁵ One such resource is www.salary.com. The website also performs cost-of-living conversions, which may be helpful for cases in which a party resides and/or is employed out of state. SCAO has not independently verified the accuracy of the data on this specific website, but rather offers it as one tool to assist FOC offices in imputing income when income is not known.

¹⁶ PA 207 of 2004 allows the FOC to impute income without knowing a party's actual income when that party fails or refuses to provide the information. [MCL 517b(6)(b)].

¹⁷ The administrative subpoena is a demand for information to a parent's employer or previous employer. FOC offices may not issue an administrative subpoena to other entities unless authorized by law. Pursuant to MCR 2.506, the court may issue a subpoena to require a witness to testify in open court and produce records and other documentation.

¹⁸ The software programs sometimes used to compute support (MarginSoft and Prognosticator) may produce disparate results from MiCSES because the tax calculations differ.

If a party requests a review and the non-requesting party does not provide the financial information, the FOC should not terminate the review.

4. *Sending Review Results Notice*

Once support has been calculated, the FOC must send the parties notice containing all of the information below.¹⁹ This notice constitutes a motion for modification of the support order and must be filed with the court.²⁰ MCL 552.517(5). No filing fee may be charged. The notice must include:

- a. *The amount calculated for support.*
- b. *The calculations upon which the support amount is based.*²¹
- c. *The proposed effective date of the support amount.*
State and federal law prohibit retroactive modification of support orders. The proposed effective date cannot be earlier than the date the proposed change is sent to the parties, unless the court orders otherwise.
- d. *The right to file an objection .*
The notice must inform the parties that they may object to the FOC recommendation within 21 days, and if neither party objects, an order will be submitted to the court incorporating the new support amount.
- e. *How and where to file an objection.*
Some FOC offices may prefer that objections be sent to the court clerk. Other offices may prefer receiving the objection so they may attempt to resolve the objection without requiring a hearing.
- f. *Assumptions for imputed income.*
If income is imputed, all factual assumptions upon which the imputed income is based.

A review-results letter recommending no change in support must be filed with the court if objections are to be sent to the clerk. If objections are processed by the FOC office, the review-results letter recommending no change in support is only required to be filed with the court upon receiving an objection from either party. Counties should follow their normal objection processes.

¹⁹ The [Notice of Support Review Results](#) in MiCSES may be used for this purpose.

²⁰ This is the administrative aspect of the review process. Before 2004 PA 207 was enacted, each support recommendation was set for a judicial hearing, even if the parties agreed to the recommendation.

²¹ A summary of the information, such as that on the MiCSES printout, is sufficient. The FOC is not required to provide a party with the other party's financial documentation (tax returns, wage statements, etc.)

5. *Objection to FOC Recommendation*

If a party files a timely objection to a recommendation, the FOC may do any of the following:

a. Schedule the matter before a judge or referee.

At a hearing, the court may consider the FOC's recommendation as evidence to prove a fact relevant to the support calculation when no other evidence is presented, if the parties agree or neither party objects to its use.

b. Recalculate support.

If a party includes additional information with the objection, the FOC may recalculate support and send out a new recommendation.²²

c. Schedule a joint meeting with the parties.

2004 PA 207 expanded the joint meeting process to include child support disputes.²³ MCL 552.642a governs joint meeting requirements and procedures. The purpose of the joint meeting is to reach an agreement and avoid a hearing. If an agreement is reached, the FOC records the information in writing and provides a copy to the parties. If the parties cannot reach an agreement, the FOC should schedule a hearing.

6. *No Objection Filed*

If the FOC recommends no change in the amount of support and there is no objection, the office may terminate the review without further action.

If the FOC recommendation includes a change in support and no objection is timely received, the FOC prepares an order consistent with the recommendation, which the court shall enter if it approves the order.²⁴ Only contested recommendations must be scheduled for a hearing.

D. *Deviation*

Michigan law presumes that the MCSF sets appropriate levels of support. However, in some cases, the amount established by the MCSF may be unjust or inappropriate given the special circumstances in the case. The court may enter an order that deviates from the MCSF if the court determines from the facts of the case that application of the MCSF would be unjust or inappropriate. The MCSF lists circumstances to consider for deviation, such as if a parent is incarcerated and without income or assets. [2004 MCSF 1.04(D)] When deviating, the law requires the court to set forth in writing or on the record all of the following:²⁵

²² The objection period would then be extended to 21 days from the date the revised recommendation is sent.

²³ The joint meeting process was authorized by law in 2002 to resolve custody and parenting time disputes in an informal setting. 2004 PA 207 expands the use of the process to child support issues. MCL 552.517b(5).

²⁴ If the court declines to enter the order, the FOC should schedule a hearing, which would proceed as a contested matter.

²⁵ The law allows the court to enter an order agreed to by the parties and that deviates from the MCSF if the deviation requirements are met. MCL 552.605(3).

1. The child support amount determined by the MCSF.
2. How the child support order deviates from the MCSF.
3. The value of property or other support awarded instead of the payment of child support, if applicable.
4. The reasons why application of the MCSF would be unjust or inappropriate. [MCL 552.605]

Recent changes to the statute leave it unclear whether the FOC has authority to recommend a deviation from the MCSF. Below are the two pertinent sections in the law.

- a. MCL 552.517(3) previously allowed the FOC to make a recommendation that deviates from the MCSF if the MCSF result would be unjust or inappropriate. 2004 PA 207 eliminated the language authorizing FOC deviation.
- b. MCL 552.505(h) requires the FOC to investigate and make a written report and recommendation regarding child support when ordered by the court. This section states that the MCSF must be used as a guideline in recommending child support, but if the FOC determines that the result would be unjust or inappropriate, the report must also include an alternative support recommendation and other factors supporting the reason for the deviation.

Courts may want to consider establishing local procedures instructing their FOC office how and under what circumstances to alert the court that a recommendation based on the MCSF may be unjust or inappropriate, or that a deviation is recommended.²⁶ Because the MCSF contains deviation criteria, and FOC offices are required to use the MCSF, a court could reasonably conclude that deviation actually may be a MCSF recommendation. Alternatively, a court may conclude that deciding whether special circumstances warrant deviation is more appropriate for the judge than the FOC.

E. Terminating a Support Review

The FOC may terminate a review process by notifying the parties and explaining the reason for the termination and how to file an objection.²⁷ Either party may object to the termination within 21 days. Grounds for terminating a review may include:

1. Insufficient information exists to conduct the review.
2. Good cause exists not to proceed.

²⁶ For example, a local policy should require the FOC to prepare two recommendations when asking the court to deviate from the MCSF (one based on the MCSF and one recommending deviation).

²⁷ The [Termination of Support Review Notice](#) in MiCSES may be used for this purpose.

3. A review was conducted for that party within the last 36 months.
4. Michigan no longer has jurisdiction to modify the order.

F. Orders Not Qualified for FOC Review

1. *Orders in which support is “reserved” or “held in abeyance.”*
Michigan law defines a support order as “... an order entered by the circuit court for a payment of support in a sum certain, whether in the form of a lump sum or a periodic payment.” MCL 552.502a(j). Thus, an order reserving support or holding it in abeyance is not a support order and cannot be reviewed unless it includes a review requirement.²⁸ If the court intends for the order to be periodically reviewed, a support order of “\$0” is a sum certain and would qualify for a review.
2. *Cases in which the court has allowed the parties to opt out of FOC participation.*
The FOC does not have the authority to review a support order if there is an “opt out” order in the case. A party who has opted out of FOC services and subsequently requests an FOC review must apply for Title IV-D services to open or reopen the IV-D case.
3. *Interim or Temporary Orders.*
The periodic review requirements are only applicable after a *final* judgment containing a child support order has been entered. MCL 552.517(1). However, the same review and modification procedures may be used to establish or modify a temporary order referred to the FOC.
4. *Medical Support Only Case.*
Federal regulations require state Title IV-D plans to provide services to non-Title-IV-A Medicaid recipients.²⁹ The single exception to this requirement is a situation in which the recipient specifically requests only medical support services. 45 CFR 302.33. Thus, an order that contains medical support provisions but is silent on child support is not subject to the requirements for an FOC review. A support amount must be established by court order before the amount can be eligible for review by the FOC. If no support is to be paid, SCAO recommends including a \$0 amount for support to allow the order to be reviewed later.

If a court or FOC has questions, please contact Kelly Howard at (517) 373-8671 or howardk@courts.mi.gov; or Steve Capps at (517)-373-4835 or cappss@courts.mi.gov.

²⁸ For example, an order may state that the FOC should review support when the payer becomes employed, or after a certain number of days. In the absence of a review requirement in the order, a party who seeks support can either contact a Support Specialist or file a motion directly with the court to initiate a child support order.

²⁹ A non-Title-IV-A Medicaid recipient receives Medicaid without Family Independence Program benefits.



Michigan Supreme Court

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Daniel J. Wright
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March 17, 2005

TO: Friends of the Court
cc: Chief Circuit Judges
Circuit Court Administrators
Family Division Administrators

FROM: Daniel J. Wright

RE: SCAO Administrative Memorandum 2005- 04
Administrative Abatement or Redirection of Child Support

Michigan law provides a process for administratively abating or redirecting child support payments when a child changes residences and no longer lives with the custodial parent. The law allows the FOC to abate the support obligation or redirect the support payments to the person *legally responsible* for the child. The law also assigns child support to the state when a child enters foster care. MCL 552.605d.

This memorandum is intended to assist friend of the court offices by examining the law and the administrative implications. If a judge or FOC has questions please contact Kelly Howard at (517) 373-8671 howardk@courts.mi.gov; or Steve Capps at (517) 373-4835 cappss@courts.mi.gov.

A. Introduction

Michigan law creates a streamlined process to allow the Friend of the Court (FOC) to administratively redirect or abate child support under certain conditions when a child no longer resides with the child support recipient.

B. Necessary Provisions in Support Order

1. Orders entered after June 1, 2003¹

To provide adequate notice to parties of these administrative processes, MCL 552.605d(1) requires support orders to contain the following provisions.²

a. Child in Foster Care

For all new and modified support orders, substantially the following statement:

“If a child for whom support is payable is placed into foster care, child support is assigned to the Family Independence Agency (FIA).”

b. Redirection and Abatement

For a friend of the court case³, substantially the following two statements:

- i. “Subject to statutory procedures, the FOC may redirect support to a person legally responsible for the actual care, support, and maintenance of a child.”
- ii. “If the child resides full-time with the payer, support for that child abates in accordance with policies established by the FOC Bureau.”

2. Orders entered before June 1, 2003

Support orders in an FOC case entered before June 1, 2003, are deemed to include the above provisions by operation of law.⁴ MCL 552.605d(2).

¹ Public Act 570 of 2002 amended MCL 552.605d effective June 1, 2003.

² The language has been incorporated into the State Court Administrative Office’s Uniform Child Support Order (Form [FOC 10](#)).

³ Due to the “opt out” law that allows parties to forego FOC services, Michigan law now defines “friend of the court case” essentially as a domestic relations case administered by the FOC. Most administrative and enforcement provisions in the law are limited to “friend of the court cases”.

⁴ The notice that must precede a redirection or abatement of support also serves to advise the recipient of this provision in the statute.

C. Support Assigned to the State – Child in Foster Care

1. Codifying a long-standing FIA policy and federal requirement, when a child for whom support is payable is under the state’s jurisdiction and is placed in state foster care, support under the order is assigned to the state. An assignment of this nature has priority over other redirections of child support in this section of the law. MCL 552.605d(3).
2. An assignment of support to the state under this section does not require notice.

D. Abating Child Support Charges in an FOC case

1. If the child for whom support is payable resides full-time with the payer, the FOC must abate support charges for that child after following proper notice procedures (See section G, ‘*Procedure to Abate or Redirect Support*’). The FOC should consider the child to be residing full-time with the payer when:
 - a. The payee has agreed to the change of residence in writing;⁵ and
 - b. The change of residence is, or will be, at least one month in duration; and
 - c. The child stays overnight at the payer’s residence.
2. For the purposes of administratively abating child support charges, “residing full-time” does not include either of the following:
 - a. The payer caring for the child while the payee is at work.
 - b. A parenting time arrangement established by court order.⁶
3. In cases with more than one child, the support abatement for one child is determined by dividing the total obligation by the number of children in the case.

Example: The order establishes support as \$200 for 1 child, \$300 for 2 children, and \$400 for 3 children. One child moves in with the payer. The support obligation for one child is: $\$400/3 = \133.33 . The FOC should abate \$133.33. The remaining obligation is \$266.67.

⁵ If the payer is unable to get the affirmation in writing, the FOC may use discretion to determine if the payee agreed to the change of residence.

⁶ The payer may qualify for a 50 percent parenting time abatement if ordered. The policy covered by this memo does not affect parenting time abatements.

E. Redirecting Child Support Payments in an FOC case

1. Upon receiving a request to redirect support, the FOC may redirect support only to a person who is *legally responsible* for the actual care, support, and maintenance of a child. Examples of being “legally responsible” for the child include:
 - a. A guardian appointed by the probate court.
 - b. A person with whom the child is placed pursuant to court order.⁷
 - c. A third party with a power of attorney executed by the child’s parent or guardian pursuant to MCL 700.5103. (Note: The power of attorney under this statute has a six-month duration.⁸ The Notice of Redirection must inform the parties that redirection expires automatically in six months if the power of attorney is not renewed and a copy sent to the FOC.)
2. **Other Caretakers**

When a child changes residence to live with a person whose legal responsibility for the child is not immediately apparent, that person must file an action with the court in order to receive child support. The FOC cannot administratively redirect support payments to a person without determining that the person has *legal responsibility* for the child. Examples of common caretaker arrangements include a child residing with grandparents or another relative. A court must decide whether the change in custody is in the best interests of the child and, if so, whether both parents should be responsible for child support, child care expenses, and health insurance for the child.

F. Interstate Cases

1. For an interstate case with an active Michigan support order, the same abatement and redirection provisions apply.
2. For an interstate case in which Michigan is enforcing another state’s order, abatement and redirection must follow the law of that state.

⁷ If a child is placed under the supervision of the FIA by court order, and the agency subsequently places the child in an unlicensed foster care setting (i.e., with a relative who does not receive foster care maintenance payments), support for that child could be redirected to the caretaker following the procedures in this policy. The caretaker must provide the FOC proof of the FIA placement.

⁸ A power of attorney executed by a member of the military deployed to a foreign nation may provide that the delegation does not expire until 30 days after the person is returned from active duty. [MCL 700.5103](#).

G. Procedure to Abate or Redirect Support

1. Upon receiving a request to administratively abate or redirect support payments, the FOC must determine whether the circumstances fulfill the statutory requirements.
2. If the case qualifies for abatement or redirection, the FOC must provide notice of the proposed action to each party. The notice must include information on how the parties may object and include the date the proposed action will take effect.⁹ The effective date must be at least 21 days after sending the notice to the parties.
3. If neither party objects to the proposed action within 21 days, the FOC may abate or redirect support as outlined in the notice.
4. If either party objects within 21 days, the FOC cannot abate or redirect support (see Section H, “Objection to Notice”).
5. During the objection period, the FOC should continue to process child support payments as directed in the court’s most recent order. The FOC has no independent authority to place a hold on child support payments during the objection period.

H. Objection to Notice

If a party properly objects to the notice of abatement or redirection, the FOC must notify the parties of the objection,¹⁰ and do one of the following:

1. Review the support order under Section 17 of the Friend of the Court Act. MCL 552.517.
2. Notify the parties that either of them may file a motion to modify support.

I. Review of Support Order

Michigan law requires the FOC to review a support order if there are “reasonable grounds” to believe that the support order should be modified. Reasonable grounds include a temporary or permanent change in the physical custody that the court has not ordered. MCL 552.517(1)(b). Upon determining that there has been an unordered change in the physical custody of a child, regardless of whether an abatement or redirection of support follows, the FOC should review the order to determine if its

⁹ SCAO has created form [FOC 106](#) (Notice of Redirection or Abatement of Child Support) for this purpose.

¹⁰ SCAO has created form [FOC 107](#) (Notice of Objection to Redirection or Abatement of Support) for this purpose.

child support provisions should be modified. However, if the change in physical custody is in dispute, the FOC is not required to conduct a review.

1. If support is *administratively abated*, a review under Section 17 could entail the FOC determining if the (new) non-custodial parent should be ordered to pay the (new) custodial parent support for the child, and to provide child care and health care coverage.
2. If support is *redirected to a third person*, a review under Section 17 could entail the FOC determining if both parents should be ordered to pay support for the child, and to provide child care and health care coverage for the child.

J. Legal Effect of Redirection

1. **No Modification of Court Order**
An administrative redirection or abatement of support can occur without a change to the court order.¹¹ If an administrative *redirection* of support is made without a new order being issued, the action of redirecting support to the third person does not make the person a party to that case. In order for a third person to become a party, someone must file the proper court papers and obtain an order conferring the rights and responsibilities of a party on the third person.¹² An *abatement* of support charges involves only the current parties, so a new court order is not necessary.
2. **Modification of Court Order**
If the FOC reviews the case due to a changed custodial environment and determines that a modified order is needed, the office must file a motion with the court.¹³

The Michigan Child Support Formula establishes a support amount for the family (both parents) and apportions that amount between the parties based on their shares of the family's total income. The support order usually specifies only the non-custodial parent's support obligation, and

¹¹ The language authorizing redirection/abatement should be included in all orders issued after June 1, 2003. Older court orders are considered to contain the language by operation of law; therefore, a change to the court order may not be necessary.

¹² Normally, a third person becomes a party by filing papers or by requesting IV-D services and having a prosecutor represent that person and obtain a new support order. Depending on the nature of the existing support case, the third person may file a new case or file a motion to intervene as a party in the existing case. Often, the intervention occurs by implication, without a formal recognition of the intervention, when the court grants relief to a third party.

¹³ A new order should be issued, for example, to require *both* parents to be responsible for child support, clarify long-term custody changes, or to grant a third party standing to participate in the case. FOC offices may develop local policies and procedures to determine the circumstances in which a new or modified order will be sought.

assumes that the custodial parent pays his/her share directly.¹⁴ A motion to require *both* parties to pay may not, therefore, be a material change in the order; rather, it seeks only to quantify both parents' support obligations in the order. However, if the court regards a motion to require both parties to pay to a third person as a *new matter*, it would not be appropriate for the FOC to bring the action because it would be advocating for the third person. In this instance, the third person would be required to file a motion with the court in order to seek child support from the second parent.

3. **Third Person Request for Support**

There are different ways in which a third person who assumes legal responsibility for a child may receive support for that child. The court may order placement and the redirection of support. Depending on the circumstances, the third party may:

- a. File an action with the court to become the child's guardian.
 - i. A guardian of a minor child may file a complaint for child support under the Family Support Act.
 - ii. A court-ordered guardianship makes the guardian legally responsible for the child, in which case the FOC may redirect child support to that person.¹⁵
- b. File an action with the court for child support. The Emancipation of Minors Act allows a guardian, a relative within the third degree,¹⁶ or a child who is at least 18 years of age to file an action for support. MCL 722.3.

K. Death of Custodial Party

1. Upon receiving notice that the custodial party has died and the child is living with the support payer, the FOC should abate the support obligation effective the date of the custodial party's death, and follow regular procedures to close the case.¹⁷

¹⁴ For example, if the total family support amount is \$1,000 per month and the non-custodial parent is required to pay \$600 per month, the custodial parent's support obligation, implicitly, is \$400.

¹⁵ Child support would likely be considered at the same time as the guardianship/custody issues.

¹⁶ Relations of the third degree include mother, father, sister, brother, grandparent, great grandparent, aunt, uncle, niece or nephew.

¹⁷ The FOC could continue to collect past due support owed to the State of Michigan. However, the estate of the deceased parent would be responsible for collecting any past due support owed to the decedent. MCL 552.509(1) only allows the FOC to pay support to the state or a party, not to a party's estate.

2. If the custodial party dies and the child goes to live with a person other than the support payer, the FOC may redirect the support to that person only if the person meets the requirements for being *legally responsible* for that child.¹⁸

¹⁸ There is authority for the court to substitute a third party in the case of a deceased parent. Cf *Bert v. Bert* 154 Mich App 208, 212 (1986). However, even if the third party is entitled to receive support in the original case, it remains unclear if the death of the custodial party terminates the support obligation, or whether the third party should intervene in that case in order to request support.